

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 19, 2001
at 3:30 P.M., in Room 317, Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Marion Mood , Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 573, 3/12/2001
HJ 27, 3/12/2001
HB 209 3/12/2001

Executive Action: HJ 21; HB 477

HEARING ON HB 573

Sponsor: REP. KEITH BALES, HD 1, OTTER

Proponents: Gail Abercrombie, MT Petroleum Association
William Duffield, Commissioner, Fallon County
REP. ALAN OLSON, HD 8, ROUNDUP
Don McDowell, Commissioner, Powder County
Art Kleinjan, MT Oil, Gas & Coal Counties
Alan Lloyd, self
Tom Ebzery, CMS Oil & Gas Co.
John Bloomquist, MT Stock Growers Assn.
Webb Brown, MT Chamber of Commerce
Nancy Schlepp, MT Farm Bureau
Jim Mockler, MT Coal Council
Mary Allen, WETA

Opponents: Tom Schneider, self and Northern Plains Resource
Council
Wallace McRae, self
Eileen Morris, self
Roger Muggli, self
Hope Stevens, self
Doug McRae, self
Deb Regele, self
Jim Sweaney, self
Patrick Judge, MEIC
David Dittloff, MT Wildlife Federation

Opening Statement by Sponsor:

REP. KEITH BALES, HD 1, OTTER, opened by saying that HB 573 addressed the coal bed methane gas development in southeastern Montana, referring to **EXHIBIT (nas62a01)** which is mainly comprised of statistics, graphs, and comparisons between Montana and Wyoming with regards to coal production. He pointed to the fact that there is four times as much strippable coal in Montana, but it produces much less than its neighboring state, to the detriment of economic development. While Wyoming's population increased, coal mines were being developed, and its infrastructure built, Montana was lagging behind. He read from the 2001 State of the State address by Gov. Jim Geringer, included in Exhibit (1), in which the latter announced the sizeable budget surplus attributed to the production of coal and natural gas. He proceeded to read from a letter contained in **EXHIBIT (nas62a02)**, favorable to the development of coal bed methane gas development. He stated that even though the methane

gas production has been a boon to Wyoming's economy, there have been those opposing it, but in the end, its supporters prevailed. He drew the committee's attention to page 9 of Exhibit (1), a map showing the checkerboard ownership of the land affected by HB 573, and said that much of the mineral rights are owned by the federal government, even though the land is privately owned. He related how drilling was started by the Redstone Gas. Co. in the Decker area in 1997, and other permits were issued subsequently. In March of 2000, the Northern Plains Resource Council filed suit against the Montana Board of Oil & Gas, essentially stopping all permitting and production from new wells, with the exception of the Red Stone Gas Co. who was allowed production from a limited number of established wells. Currently, no new permits are being issued until after the EIS is completed in collaboration with the DEQ, DNRC, and BLM; this would also push back the target date as per proposed drilling schedule contained in Exhibit (1). Page 13 of the exhibit shows the anticipated revenue stream per well, and he mentioned that gas prices have doubled since, potentially providing great economic benefit for the state and its people.

REP. BALES went on to say that due to a prevalent "gas migration" or drainage problem, the BLM in Wyoming has not allowed any drilling on federal lands, costing them 1.2 million dollars a month in lost revenue because once that gas is drained, its value cannot be recaptured. HB 573 deals with this problem in Montana. It has been determined that drainage mostly occurs within one mile from the drilling point, so this bill authorizes the Board of Oil & Gas to permit wells on any state or private land where there is production within a mile. He maintained that his bill protected the surface (land) owners and set up a priority for the discharge water, as set forth in Section (4) of the bill. The discharge water is the water used to flush out the gas in the reclamation process, he explained, and it is transported through underground pipelines. If this water can be treated to take out the sodium, it can be used for stock water or irrigation which would be an added benefit to the ranchers who could develop stock water pipelines. If it is not economically feasible, the bill provides for three different disposal methods, all done according to statute. Lastly, he mentioned the effective date as being June 1, 2002.

Proponents' Testimony:

Gail Abercrombie, MT Petroleum Association, repeated that the crux of this bill was the drainage issue, being able to drill off-set wells so that the royalties from the gas productions will not be lost but can go to fund education as part of the state land trust.

William Duffield, County Commisioner, Fallon County, felt that the oil and gas industry has proved itself to be a very responsible industry and has come a long way in addressing environmental and landowner issues. He believed that coal bed methane gas can and will be developed in a manner that is both environmentally safe and beneficial to farmers, ranchers, and the State of Montana.

REP. ALAN OLSON, HD 8, ROUNDUP, also rose in support of HB 573, saying that development of oil and gas is a property right, and this bill is designed to protect that right from drainage.

Don McDowell, Powder River County Commissioner, stated that past oil development in his county helped build its infrastructure and kept its people employed. Now, their main industry is agriculture, and their most precious export their children. Looking at HB 573, he felt it protected the private mineral holders, and benefitted agriculture by re-injecting the water pursuant to statute.

Art Kleinjan, MT Association of Oil, Gas & Coal Counties, asserted that responsible extraction of methane gas was a benefit to all of Montana, especially to the schools and ranchers.

Alan Lloyd, self, stated he was a rancher in Big Horn County which was fairly arid, and he would welcome being able to get some of the water in the underground pipelines for irrigation of his fields and rangeland, or his stock.

Tom Ebzery, CMS Oil and Gas Company, said this company holds oil and gas leases in eastern Montana and strongly supports HB 573. He stated that he had some concerns with the original version of the bill and lauded the sponsor for making appropriate changes. He mentioned the ongoing moratorium; with the exception of some permitted wells, there was no drilling activity in southeastern Montana, and he hoped the programmatic EIS would be done before too long.

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He pointed to the vote on the House floor which garnered over 70 votes, and he took this as an endorsement of the sponsor's approach and support for coal bed methane as a viable economic development tool for southeastern Montana.

John Bloomquist, Montana Stock Growers' Assn., talked about the implications of the coal bed methane development with regards to the farmers' and ranchers' water supply. He feared there would not be a lot of sideboards, other than in the controlled ground water area, on water development, impact on ranchers, or water rights. He applauded **REP. BALES** for coming forward with a plan

as in Section (4) of the bill which did create some sideboards and direction on water development associated with coal bed methane exploration or extraction.

Webb Brown, Montana Chamber of Commerce, urged support of HB 573 for the reasons given in previous testimony.

Nancy Schlepp, Montana Farm Bureau, concurred and expressed her support for the bill.

Jim Mockler, Montana Coal Council, stated that they had some issues with the draw-down of the water when the methane gas development was implemented, but that these problems had been worked out since, and they welcomed the new industry.

Mary Allen WETA, asked for support of this bill as responsible economic development.

Opponents' Testimony:

Tom Schneider, self and Northern Plains Resource Council, stated that he had been a petroleum engineer since the 1970's, and had worked for the Public Service Commission for eight years. He explained that the coal bed methane production involved a joint production mechanism for saline water and natural gas, produced in tandem with the coal extraction. He stated that the industry's projected 9,550 wells were the bare minimum, and the affected area would stretch from Bozeman to the North Dakota border. An industry that large would produce 2 ½ billion barrels of saline water which was a major factor in the EIS currently being developed, because the water quality was poor to marginal and not suitable for irrigation. Currently, this water is being discharged into the Tongue River Reservoir, exceeding the water quality standards fourfold. To illustrate this point, he distributed **EXHIBIT (nas62a03)**. He warned the committee that the coal bed methane development as outlined reflects the most significant environmental risk in the years he had been around this industry, and he felt that the safeguards in the bill were not adequate.

Wallace McRae, livestock rancher south of Forsyth, quoted from Joseph K. Howard's book "Montana High, Wide, and Handsome". He stated that the water from each of his 16 springs and shallow wells came from coal bed aquifers. He was adamant that the depletion of stock water required to extract the methane and the subsequent dumping of that water threatened the viability of his ranch and thousands of others. He warned that the aquifers we depend on would be depleted and the waste water would poison our streams and soil, adamantly opposing this bill.

Eileen Morris, self, stated that her ranch was in the middle of the proposed coal bed methane development. She said that farmers face and have to live with a lot of adversity, and she understood why some ranchers were looking to this type of industry as a way to financial security. She maintained, though, that this legislation put the farmers' and ranchers' water rights at risk, and she felt it added another layer of complexity to the permitting process. She was concerned that along with guarding against collateral extraction of methane gas, the provisions in HB 573 sought to legislate how to deal with the billions of gallons of discharge water which was too salty for irrigation. She repeated that the water could be treated, but HB 573 proposes to either hold it in a containment pond or drain it into the rivers if it was not economically feasible to be used in an agricultural application. She asserted that there was no "economically feasible" clause in Montana's water laws. If you use water, it must be for a beneficial use, and you need to get a water right. If you are using it for something that is not deemed an beneficial use, then the activity is illegal; thus, this bill could create an exemption from the state's water right laws for methane gas developers which would not be fair. She suggested to wait with the implementation until the EIS was completed, so a solution based on sound science and careful reasoning could be found with regards to the disposition of this water.

Roger Muggli, self, told the committee that his family had a 1600 acre irrigated farm in the Tongue River irrigation district. He felt this bill was not needed because its effective date was after July 2002, one month after the completion date of the EIS. He agreed with previous testimony regarding the exemption it created in the area of water right laws as well as the fact that the discharge water was unusable, and opposed the idea of Montana's farmers being the proverbial sacrificial lamb.

Hope Stevens, self, suggested other methods of power generation and wondered why Montanans were not more informed about such things as solar power or wind-based power.

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In closing, she submitted **EXHIBIT(nas62a04)**, her written testimony.

Doug McRae, stated that he owned and operated the ranch his great-grandfather settled in 1886, and felt it survived solely because it was located at a site where there was water available in the 1930's when all around him homesteads failed because of the drought. He said he had attended meetings where he learned about methane gas production and its possible impact to agriculture, and his main concern was with the effect on springs

and wells used by ranchers. In the meetings which the conservation board had with state hydrologists, the conclusion was that flows of these springs and wells would be altered or become non-existent, and the amount of time or the degree to which the aquifers will recover was unknown. He asserted that the estimated number of planned wells had grown from 10,000 to 120,000, and he expressed hope that this legislation not go forward.

Deb Regele, self, questioned the purpose of this bill since its effective date was after the end of the moratorium and the EIS would be completed. In her opinion, the water provisions in HB 573 were dangerously vague, and she repeated testimony regarding Montana's water laws. She stated she was not trying to stop CBM development but wanted to see it done right, because we could not afford to add to the problems Wyoming has already created by allowing the discharge water to be dumped into streams and rivers that flow into Montana. She stated that the only way to address all the issues and concerns was with an EIS.

Jim Sweaney, self, also stated he did not want to stop methane gas development because it was too valuable, but he wanted Montanans to manage it instead of it being managed by industry.

Patrick Judge, MEIC, rose in opposition of this bill because Montanans' primary concern was with water quality and quantity. He felt there was a unique opportunity to guide this process from its inception, and it required a deliberative and public process, and that was the environmental impact study already underway. He said his organization was against HB 573, but suggested a few amendments, such as the effective date being June 1, 2002 as the House had wanted. Its intent was to respect the moratorium and allow the EIS process to go forward, and he suggested this bill to be triggered upon completion of the EIS process. He felt section (4) was limited to current knowledge, and he wanted to insert language saying we should not preclude other alternatives as potentially identified in the EIS.

David Dittloff, MT Wildlife Federation, felt there were a lot of threats to wildlife with implications to fishing and hunting opportunities, and hoped the committee would table HB 573 so the EIS process could run its course.

Informational Testimony:

Tom Richmond, Administrator and Petroleum Engineer, Board of Oil & Gas Conservation, explained that this bill authorized the board to issue permits for coal bed methane gas wells to protect private owners from drainage by wells permitted by other

authorities, be they federal, tribal, or adjoining states. Processing of permits under this bill would only occur if doing so would be required to protect a citizen's property right. This would happen only if the current joint federal/state EIS was not completed before the delayed effective date of the bill. If federal and tribal governments began to approve CBM permits following the completion of their NEPA process, and a decision of the state's MEPA process is somehow delayed, federal and Indian wells could begin to drain private wells without compensation to the landowners. Drainage of natural gas is a well-documented occurrence, and it is irreversible.

Rebecca Watson, Redstone Gas Partners, spoke on behalf of the only producing coal bed methane company in the state. She submitted some printed material as well as an informational video, **EXHIBIT (nas62a05)**. She informed the committee of some of the restrictions put upon her company's operations, such as gas production from only 250 out of 320 wells, and the amount of water they are allowed to discharge into the Tongue River, protecting the beneficial uses such as irrigation. They are also subject to a controlled groundwater agreement as described in Exhibit (5) which requires the company to replace water within a one mile radius if it is found to have been damaged by the drilling operation. The burden of proof, in this case, is not on the landowner. She assured the committee that Montana has protective laws in place, pointing to MEPA and NEPA as some of those laws, and proclaimed that Redstone was committed to the EIS process and felt certain that a lot of the issues the Northern Plains Resource Council has brought will be addressed by it. She tried to allay wide-spread concerns of salty water flowing across Montana's soil, and pointed to the state's water quality laws which would prohibit the uncontrolled discharge of that water. She touched on the different ways of treating the saline water, diffusing **Tom Schneider's** accusation that they had not committed to any one by stating that they are waiting for recommendations based on the EIS. The methods of disposal are either treatment to make it usable for irrigation; deep injection into an aquifer below the one being used; stock ponds; or wetlands and wildlife ponds. She felt this legislation was needed to stave off potential litigation by the Northern Plains Resource Council which would allow them to proceed with the methane development on tribal, federal and private lands. She pointed to the eight times in the last eight months that the NPRC has either sued or filed intent to sue the methane gas industry.

Questions from Committee Members and Responses:

SEN. GLENN ROUSH asked if the Board of Oil and Gas Conservation had jurisdiction over the projected methane wells. **Tom Schneider**

responded that they only had jurisdiction over privately and state owned minerals. **SEN. ROUSH** asked if they anticipated going beyond 200 wells. **Tom Schneider** replied that the wells addressed in this bill are drainage protection wells which assumes that some adjoining exploration is taking place which creates a drainage situation. The Board would employ a public hearing process to determine whether a well should be permitted under this bill, to ascertain whether drainage would actually occur. **SEN. ROUSH** asked if there was anyone present from the DEQ, and **Art Compton** stepped forward. **SEN. ROUSH** inquired if he had a completion date for the EIS. **Mr. Compton** replied that it was hoped a draft would be out for public review in September, and the final EIS in March of 2002. He admitted it could be a couple of months later because it was a very complex, joint state/federal undertaking, covering a large area and many jurisdictional issues. **SEN. ROUSH** then wanted to know whether his department also addressed the water rights in this issue. **Mr. Compton** stated that Montana's water rights program was administered by the DNRC; DEQ's share dealt with water quality.

SEN. KEN MILLER wondered if anything could slow the time frame, such as lawsuits. **Mr. Compton** responded that potential litigation could happen after the EIS was drafted, and agency decision based on it could delay permitting; litigation would not delay the EIS but could delay permit decisions.

SEN. MIKE TAYLOR wondered, if someone had a ranch next to his and decided to drill for methane gas within 100 yards of their common border and the drilling depleted his aquifer, would he have to go to court. **John Bloomquist** explained that the developer had to enter into a mitigation agreement, meaning if his extraction activities affected the neighbor's water, he had to supply him with water.

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This bill requires that the developer shows his use of the water is not going to adversely affect your water; if he cannot do that, he will not get a water use permit. Should there still be problems after all this goes through, the enforcement division under the water use act is available for help and, as a last resort, the courts.

SEN. TAYLOR wanted to know if the ranchers and farmers in the affected area would be for or against the methane gas development. **Eileen Morris** admitted she did not know. **SEN. TAYLOR** then asked the sponsor about the concerns with the discharge water. He wondered how property rights could be protected, and whether the gas companies had a source of information or technology available to them, aiding in their determination of how to treat the water to make it acceptable to

agricultural use. **REP. BALES** answered he was not aware of any entity coming in with a silver bullet, but there were companies working on a process called "reverse osmosis" to clean the water, as well as numerous other methods because the issue of clean water is a very important one, and it has to be solved.

SEN. MACK COLE inquired whether any agency aside from the DEQ and the DNRC was presently collaborating on the EIS. **Tom Richmond** replied that the DEQ and the Board of Oil & Gas Conservation were state co-leads with the BLM. **SEN. COLE** asked for his comments with regards to the water affected by wells being drilled, and the final order by the DNRC regarding the Powder River Basin.

Tom Richmond replied that the Powder River Basin was being looked at because it appeared to be the only place of interest in the state for development of coal bed methane. A regulatory process between the DNRC's controlled groundwater area and the Board's order #99-99 which was thought to set the framework for the state only addressed the Powder River Basin. A questionnaire resulted in the revelation that other areas were also interested in CBM development, and those areas did not seem to have problems with shallow groundwater. **SEN. COLE** asked for clarification of the clause saying that developers must offer mitigation contracts to owners of water wells within one half mile. **Tom Richmond** explained that the mitigation agreement changes the burden of proof from the person with the impaired water well having to prove the impairment was due to the gas extraction to the CBM operator having to prove he did not adversely affect the well. The Oil & Gas Board set up a moving half mile radius, meaning that if a well was adversely affected within the half mile radius, the distance is changed and moved half a mile beyond that well. He knew of only two instances where a well had been replaced under this agreement. **SEN. COLE** wanted confirmation that this bill protected lands in Montana from drainage from wells in Wyoming, and **Tom Richmond** affirmed this. **SEN. COLE** then asked if there were a lot of wells drilled closed to the Montana border. **Tom Richmond** replied he was only aware of the wells Redstone had drilled in Wyoming, with offsetting wells in Montana, and he doubted that there was any drainage. **SEN. COLE** felt that we would not see any major drainage from those wells by waiting until the year 2002. **Mr. Richmond** did not expect much development along the border, and stated that HB 573 set up a mile radius as the area of concern.

SEN. KEN TOOLE wondered whether the discharge water got salty during the extraction process or if it was already that way in the ground. **Tom Schneider** replied that the groundwater being produced in conjunction with the gas contains these minerals, or salt, just as most oil field water production contains salt in the formation. **SEN. TOOLE** surmised that by re-injecting it, we

were putting back the same quality of water. **Mr. Schneider** confirmed that the ideal situation was to re-circulate that same water in to the same aquifer; that way, the depletion or contamination arguments were mitigated.

SEN. TOOLE referred to the previous question of litigation potentially delaying projects after completion of the EIS, and asked if it could occur independently of the EIS. **Mr. Schneider** explained litigation could occur at any part of the process.

SEN. TOOLE then asked if he thought that the information gathered during an EIS was beneficial to the state, particularly when defending actions. **Mr. Schneider** felt that the department's best insurance policy against litigation was a well executed EIS.

SEN. TOOLE asked the sponsor if there was technology available to treat the discharge water to make it usable. **REP. BALES**

confirmed that but said it was questionable whether it was economically feasible at this point. **SEN. TOOLE** then referred to the urgency mentioned in the bill to go forward with this, because gas is being depleted by development in Wyoming, and its effect on wells, and asked if gas migrates more than groundwater.

REP. BALES confirmed that gas will migrate more readily than water; to release the gas from the coal and get it to start flowing, the water pressure has to be reduced. That could mean that you have gas moving a mile away, but you also have ample water for livestock. **SEN. TOOLE** inquired if the discharge water was deemed too salty for agricultural use, would it then just be pumped back into a river, pointing to Section (2) of the bill.

REP. BALES replied that he is currently using it for his livestock as it was not suitable for irrigation, and he asserted it was not like the deep water found in oil fields. The discharge permits are authorized by the DEQ, and they look at the beneficial use of a body of water such as the Powder River, and if that is irrigation, they do not allow its degradation below its intended use. This means disposal has to take place by some other method. **SEN. TOOLE** felt, in light of this, the new Section (2) was backwards. **REP. BALES** cautioned that we have to balance our private property rights and the interest of our state against all aspects, and felt this was part of it. He saw a danger in deliberating to the point where we are paralyzed by analyzation, and allowed the methane to be depleted from underneath state lands to the detriment of our schools. He felt the legislature had the fiduciary responsibility to look after the interest of the school trust. **SEN. TOOLE** asked the sponsor how he would reconcile this with the right to a clean and healthful environment. **REP. BALES** stated that it is a balancing act because the constitution guarantees both the right to a clean and healthful environment and private property rights, and to be able to prosper from those property rights. By not allowing this

development, private property rights were taken away which could never be returned.

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SEN. BILL TASH asked **Rebecca Watson, Redstone Gas Partners**, who signed in as an informational witness, how the salt content of this water compared to the Great Salt Lake. **Rebecca Watson** denied knowing the answer but thought it would be greater than that in the Tongue River and less than Salt Lake. **SEN. TASH** told the committee how he buys stock salt from the Great Salt Lake and processes it for water softeners, and he wondered if there was a potential for commercialization of the byproduct. **Ms. Watson** concurred that there was a lot of potential out there; that was why they were looking at various alternatives to have a win-win situation, supporting the CBM development as well as a sustainable agricultural economy.

Closing by Sponsor:

REP. BALES closed on HB 573 by pointing to the safeguards built into it which would protect landowners and their water wells, as well as our rivers and streams, and by making sure the water went to beneficial use as defined by law. He was certain that once the EIS was completed, the BLM would go forward with permitting wells on federal minerals but feared that, without this legislation, the state portion would be appealed, resulting in injunctions.

HEARING ON HJ 27

Sponsor: **REP. KEITH BALES, HD 1, OTTER**

Proponents: **Gail Abercrombie, MT Petroleum Association**
William Duffield, Commissioner, Fallon County
Tom Ebzery, CMS Oil & Gas
REP. ALAN OLSON, DISTRICT 8, ROUNDUP
Rebecca W. Watson, Redstone Gas Partners

Opponents: **None**

Opening Statement by Sponsor:

REP. KEITH BALES, HD 1, OTTER, opened by saying that HJ 27 asks that the EQC monitor the EIS process for the CBM development; the EQC has been studying the MEPA process during the past biennium, and he felt the organization would benefit from monitoring the process.

Proponents' Testimony:

Gail Abercrombie, MT Petroleum Association, informed the committee that the EQC had heard a number of presentations on the development of coal bed methane during the interim, and she felt it was appropriate that this organization observed and monitored this particular process.

William Duffield, Commissioner, Fallon County, representing the MT Association of Oil, Gas and Coal Counties as well, also rose in support of HJ 27.

Tom Ebzery, CMS Oil & Gas, stated that this EIS was a programmatic EIS and therefore a big deal, with several million dollars being spent. He, too, felt that having the EQC involved in this process would be beneficial, not only for coal bed methane but other areas as well, and urged concurrence.

REP. ALAN OLSON, HD 8, ROUNDUP, affirmed he was co-sponsor on this bill as well as the previous one, and whole-heartedly supported it.

Rebecca W. Watson, Redstone Gas Partners, also stood in support of HJ 27.

Closing by Sponsor:

REP. BALES closed on HJ 27.

HEARING ON HB 209

Sponsor: REP. CHRISTOPHER HARRIS, HD 30, GALLATIN GATEWAY

Proponents: Jane Jelinski, self

Opponents: Frank Crowley, City of Billings
Steve Wade, BNSF
Gail Abercrombie, MT Petroleum Association
Don Allen, WETA

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS, HD 30, GALLATIN GATEWAY, opened by saying that HB 209 deals with two factors. The DEQ currently has the responsibility to order a polluter of groundwater to either hook up the affected homeowner to city water, dig a deeper well

for him, or provide bottled water. If the DEQ was slow to respond or the polluter was avoiding his responsibility, and the homeowner resorted to the above means on his own, the department had no authority to order the responsible party to reimburse the homeowner. He cited an old case where a dry cleaning operation seriously contaminated nearby well water, and agents of the DEQ and the City Health Department went door to door, warning people of the seriousness of the problem and advised them to hook up to city water. Most people did so, and when they went to the DEQ regarding reimbursement, they were told there would not be any money because they had done this before the department could act and order the polluter to pay for the incurred costs, which amounted to about \$3,500 per hook-up. He felt that nobody would wait for the department to act, but would do everything possible to protect themselves and their families. HB 209 gives the DEQ the authority to force the polluter to reimburse the homeowner. Also, if the department is in the process of suing the responsible party, and these private response costs exist, they can add those costs to the litigation. Lastly, it allows the homeowner to sue the responsible party, but the sponsor pointed out that the occurrence of this would be remote. He told the committee that he had worked with the DEQ on drafting this bill, and made numerous changes to safeguard their concerns. The private response costs, for example, have to be certified by the department as being actual and reasonable, thereby guarding against frivolous claims; there is no double recovery; there is a \$25,000 limit per household; there is notice to the responsible parties to give them the opportunity to take care of the problem themselves; and, should there be a frivolous lawsuit, the responsible party can collect attorney's fees. He referred to a letter from Mr. Crowley, Attorney at Law, (which was submitted later during testimony), assuring the committee that the defect he addressed is in current statute; HB 209 allows people to simply challenge the order, they do not have to be in compliance with it.

Proponents' Testimony:

Jane Jelinski, self, (not MACO), stated that she was a county commissioner during the time the incident described above was discovered, and told how devastating it was to her constituents. The water was so toxic that they were not even allowed to wash their clothes in it. The plume went out for many miles, through very modest neighborhoods, and those people had to scramble to hook up to city water and could not wait for litigation to come to an end.

Opponents' Testimony:

Frank Crowley, City of Billings, stated that reservations have occurred with the section of the bill that authorizes the DEQ to collect private response costs. He felt there could be a constitutional problems regarding the issue of separation of powers; the enforcement of private debt should be in the arena of the judicial branch of government and not the executive branch. Of equal concern to him was the programmatic issue, the administration of the state's Superfund Law. These sites typically are very complex, insurance companies and/or local governments are involved with PRP's (potentially responsible party), and there are issues with remedy collection, cost and liability allocation, and he was afraid that turning the collecting of funds over to the DEQ would further complicate matters.

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He maintained that application of this bill could create some very tense situations when it came to remedy collection. Moreover, he was certain that the type of situation addressed in HB 209 would not happen today, after the department's re-organization and the maturing of the CECRA program. **EXHIBIT (nas62a06)**

Steve Wade, BNSF, stated he, too, appreciated **REP. HARRIS's** work and amendments aimed at alleviating their concerns but, while he felt an individual should be able to recover their costs, the department should not be his attorney. He proclaimed that the bill should be broader in scope if it really wanted to help people in these situations, and not just address homeowners but all innocent parties. He also felt there would be a conflict of interest if the department's attorneys worked on a settlement or cost recovery for a private citizen. Lastly, he hypothesized that a homeowner could read about a plume of contamination in the paper, and would run out to apply for a city water hook-up needlessly because he had no way of determining if the threat was a serious one. Because of its potential to muck things up, this bill was not needed; the appropriate way was to allow private parties to have their own right of cost recovery, and not put the DEQ in the middle of it.

Gail Abercrombie, MT Petroleum Association, rose in opposition for the aforementioned reason, saying it was not good policy.

Don Allen, WETA, agreed with previous testimony, reiterating it was a bad idea to use the DEQ as attorney for individuals and small businesses. He liked the concept, but could not agree to the implications, and was very concerned with the negative impact on the voluntary clean-up act.

Questions from Committee Members and Responses:

SEN. TOOLE asked how the separation of powers would apply to the fair housing law enforcement, or the human rights act, with the executive branch acting on behalf of private citizens. **Frank Crowley** explained that it was a different issue. He had focused his comments on the issue of debt collection and stated that the logic which applied to fair housing laws involved small claims court and did not apply here. **SEN. TOOLE** inquired about the role of the board of crime control, being able to go in and assist the victim, and then order the perpetrator to pay. **Mr. Crowley** replied that he did not want to present himself as a constitutional scholar, but to his knowledge, creditor/debtor relationships have never been the subject of an executive branch participation. **SEN. TOOLE** wondered if there were other avenues a homeowner could pursue if his water was contaminated or if he had to accept the department's orders. **Mr. Crowley** replied that under CECRA, the DEQ has both the responsibility and the authority to issue abatement orders to the PRP as well as order him to provide clean water to people in the affected zone. This caused a client of his to provide bottled water for 17 residences for five years, at a great cost to him. **SEN. TOOLE** wondered if this was what happened in the incident **Ms. Jelinski** and the sponsor had described, and **Mr. Crowley** said no. **SEN. TOOLE** asked if the laws had changed. **Mr. Crowley** said it was his understanding that this happened at the very time the DEQ was being re-organized and responsibilities were being moved around. He maintained that **REP. HARRIS** should have been able to ask the DEQ to connect the affected housing development to the city water system and speculated that it did not get done because of the internal changes causing confusion over whether the superfund laws gave them that authority. **SEN. TOOLE** asked how fast a response action can be expected, and **Mr. Crowley** confirmed it would be right away.

SEN. MCCARTHY referred to a similar incident in Lockwood where cleaning fluid was released and asked if the issue at hand was the same. **Sandy Knowelson, DEQ**, replied that it was similar, except that it was the department who supplied the bottled water because it was not immediately clear where the source of contamination was. **SEN. MCCARTHY** made reference to a current bill dealing with similar issues, and asked how it fit in with HB 209. **Sandy Knowelson** stated HB 94 provided the department with some flexibility in notifying parties that they are responsible, which makes it easier to issue the order and start the cost recovery process. **SEN. MCCARTHY** wondered if both bills were needed and whether they were compatible. **Sandy Knowelson** informed her that the bills were fairly independent of each other.

Closing by Sponsor:

REP. HARRIS closed on HB 209, asking to address some of the questions that had been raised. He told the committee that the DEQ did not always respond quickly, that it was short-staffed and faced further cutbacks if HB 2 passed. He also maintained that the government can act on behalf of its citizens, referring to HB 411 which he sponsored and which was awaiting the governor's signature, and stated that restitution was a key component of our constitution. He went on to say that with the safeguards in his bill, there will not be any padded claims as inferred by some testimony, because the DEQ has to certify the claims to be actual and reasonable. And there is more due process in HB 209 for the responsible parties than in CECRA; the PRP does not have to comply with the order in order to contest it which presents a vast improvement over current law.

{Tape : 4; Side : A; Approx. Time Counter : 0}

NOTE: The committee started executive action on HJ 27, and seeing that the discussion would be too long and involved for the late hour, postponed it to a later date.

EXECUTIVE ACTION ON HJ 21

Motion/Vote: SEN. MILLER moved that HJ 21 BE ADOPTED. Motion carried 11-0.

EXECUTIVE ACTION ON HB 477

Motion/Vote: SEN. COCCHIARELLA moved that HB 477 BE CONCURRED IN. Motion carried 11-0.

ADJOURNMENT

Adjournment: 6:15 P.M.

SEN. WILLIAM CRISMORE, Chairman

MARION MOOD, Secretary

WC/MM

EXHIBIT (nas62aad)